

## REMARKS

Claims 1-12 and 43-49 are pending in the application. Claims 1, 4, 43, and 47 are independent. In the present Paper, no claims have been amended, canceled, or added.

### Rejection of Claims 1-12 and 43-49 Under 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 1-12 and 43-49 under 35 U.S.C. §103(a) as being obvious over U.S. Patent Publication No. US 2004/0117831 to Ellis et al. (hereinafter “*Ellis*”) in view of U.S. Patent No. 5,790,935 to Payton et al. (hereinafter “*Payton*”). Applicant respectfully traverses the rejection.

To establish a *prima facie* case of obviousness, an Examiner must show that there is some expectation of success that the combination proffered would result in the claimed invention. The Examiner also must show that the cited references teach each and every element of the claimed invention. (MPEP §2143.) *citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was independently known in the prior art. *KSR Int’l C. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007). It can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed. However, is improper to combine references where the references teach away from their combination, such as by changing the principle of operation of one or more of the references and/or by making one or more of the references unsatisfactory for their intended purpose. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

Representative claim 1 recites in pertinent part “broadcasting content descriptors, which describe available content being considered for potential inclusion in a future broadcast schedule, to a plurality of clients; receiving feedback from at least one of the plurality of clients regarding the content descriptors, the feedback being an indication from the at least one of the plurality of clients of the relative desirability of the available content described by the content descriptors; refining a list of available content in response to the feedback to create the future broadcast schedule, wherein refining the list of available content *prioritizes an order in which at least a*

*portion of the available content* described by the content descriptors *will be broadcast*; and broadcasting the available content listed in the refined list of available content, according to the future broadcast schedule as prioritized by the refining, to the plurality of clients” (emphasis added). Claims 4, 43, and 47 recite similar subject matter.

In the Office Action, the Examiner states that *Ellis* discloses broadcasting content descriptors, which describe available content being considered for potential inclusion in a future broadcast schedule, to a plurality of clients; receiving feedback from at least one of the plurality of clients regarding the content descriptors, the feedback being an indication from the at least one of the plurality of clients of the relative desirability of the available content described by the content descriptors; refining a list of available content in response to the feedback to create the future broadcast schedule, wherein refining the list of available content prioritizes an order in which at least a portion of the available content described by the content descriptors will be broadcast.” Specifically, the Examiner cites “The user may be given the opportunity to select a sorting criteria, such as by year of release, by title, or *by time of airing* on television. The user may select any individual movie to find out if it is available...” (emphasis added) for teaching “refining a list of available content in response to the *feedback* to create the future broadcast schedule, wherein refining the list of available content *prioritizes an order* in which at least a portion of the available content described by the content descriptors will be broadcast” (emphasis added) recited in claim 1. Applicants respectfully disagree.

Applicant respectfully submits that *Ellis* is describing a scenario in which the system has *already determined* when a movie is to be broadcast. *Ellis* is not describing a user being able to provide input as to when a movie is to be broadcast. A user in *Ellis* has no input into when content is to be broadcast because broadcast times in *Ellis* are predetermined. Applicant respectfully submits therefore that this element is not taught in *Ellis*.

In the Office Action, the Examiner concedes that *Ellis* fails to disclose “broadcasting the available content listed in the refined list of available content, according to the future broadcast schedule as prioritized by the refining, to the plurality of clients” as recited in claim 1, but cites *Payton* for this proposition. Applicant respectfully disagrees.

*Payton* appears to provide a system that ***predicts*** what a user may be interested in viewing and provides a list of recommended items to the user. That is, the list provided to users in *Payton* is ***based on recommendations by the system***.

Applicant respectfully submits further that the combination of *Ellis* in view of *Payton* fails to disclose “wherein refining the list of available content prioritizes an order in which at least a portion of the available content described by the content descriptors will be broadcast” as recited in claim 1. That is, in embodiments of the claimed invention, the user determines the order in which available content will be broadcast. In contrast, in *Ellis* the order is predetermined and in *Payton* the order is predicted by the system. Because the combination of *Ellis* in view of *Payton* fails to teach each and every element of claim 1, Applicant respectfully submits that the Examiner has failed to make out a *prima facie* case of obviousness of claim 1 over *Ellis* in view of *Payton*. Because the Examiner has failed to make out a *prima facie* case of obviousness of claim 1 over *Ellis* in view of *Payton*, Applicant respectfully submits that claim 1 is patentable over *Ellis* in view of *Payton*. The same arguments apply to claims 4, 43, and 47.

Claims 2-3 properly depend from claim 1 and are thus patentable for at least the same reasons that claim 1 is patentable. Claims 5-12 properly depend from claim 4 and are thus patentable for at least the same reasons that claim 4 is patentable. Claims 44-46 properly depend from claim 43 and are thus patentable for at least the same reasons that claim 43 is patentable. Claims 48-49 properly depend from claim 47 and are thus patentable for at least the same reasons that claim 47 is patentable. (MPEP §2143.03 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988))). Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 1-12 and 43-49.

## CONCLUSION

Applicant respectfully submits that all grounds for rejection have been properly traversed, accommodated, or rendered moot and that the application is now in condition for allowance. The Examiner is invited to telephone the undersigned representative if the Examiner believes that an interview might be useful for any reason.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Date: June 22, 2007

/Jan Little-Washington, Reg. No. 41,181/

Jan Little-Washington

Reg. No. 41,181

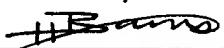
(206) 292-8600

## FIRST CLASS CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on June 22, 2007  
Date of Deposit

Harleen Bains  
Name of Person Mailing Correspondence

 June 22, 2007  
Signature Date